

REPRESENTATIVE FOR PETITIONER: Katie Kotter, Attorney at Law

REPRESENTATIVE FOR RESPONDENT: Catherine Lane, Knox County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Highland Woods Community)	Petition No.: 42-023-17-2-8-01440-17
Center and Park, Inc.)	
)	
Petitioner,)	Parcel No.: 42-12-34-103-007.000-023
)	
v.)	
)	Assessment Year: 2017
Knox County Assessor,)	
)	
Respondent.)	

Appeal from the Final Determination of the
Knox County Property Tax Assessment Board of Appeals

March 21, 2019

FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL DETERMINATION

The Indiana Board of Tax Review (“Board”) having reviewed the facts and evidence, and having considered the issues now finds and concludes the following:

I. Introduction

1. After the Knox County Assessor made Highland Woods Community Center and Park, Inc. (“Highland Woods”) reapply for an exemption it had previously been granted, the Knox County Property Tax Assessment Board of Appeals (“PTABOA”) reduced the percentage of that exemption for 2017. Highland Woods claims that it was not required to reapply for an exemption, and that even if its exemption was subject to review, the PTABOA improperly reduced the percentage.

2. We need not address the PTABOA’s authority to review Highland Woods’ exemption because Highland Woods demonstrated that its property was owned, occupied, and predominantly used by Catholic churches and schools for exempt purposes. It is therefore entitled to a 100% exemption.

II. Procedural History

3. In 2014, Highland Woods applied for an exemption for its property located at 1277 Hart Street Road in Vincennes on grounds that it was a public charity under section 509(a)(2) of the Internal Revenue Code. The PTABOA granted it a 100% exemption. Two years later, Highland Woods received a letter from the Assessor’s office stating that the PTABOA sought to review that exemption. The letter told Highland Woods to file a Form 136 application, or the property would lose its exemption. *Pet’r Exs. 6-7; Vieke testimony.*
4. Highland Woods filed a Form 136 application, again citing to its status as a public charity under the Internal Revenue Code. The PTABOA granted a 25% exemption. Highland Woods timely appealed that determination by filing a Form 132 petition with us, claiming that it was entitled to an exemption under Ind. Code §§ 6-1.1-10-16 and 6-1.1-10-36.3 based on the property’s use for charitable, educational, and religious purposes.
5. On July 11, 2018, our designated administrative law judge, Kyle C. Fletcher (“ALJ”), held a hearing on the petition. Timothy Vieke, President of Highland Woods’ board of directors, and Ed Thais, PTABOA member, testified. Neither the Board nor the ALJ inspected the property.
6. The Assessor did not offer any exhibits. The Petitioner submitted the following exhibits:
 - Petitioner Exhibit 1: IRS letter
 - Petitioner Exhibit 2: Highland Woods Articles of Incorporation
 - Petitioner Exhibit 3: Highland Woods Bylaws
 - Petitioner Exhibit 4: Property Record Card (“PRC”) and Beacon printout for subject property
 - Petitioner Exhibit 5: Photographs of subject property
 - Petitioner Exhibit 6: Unsigned Form 136 exemption application for 2014

- Petitioner Exhibit 7: August 12, 2016 letter from Knox County Assessor
- Petitioner Exhibit 8: 2016 event calendar and table
- Petitioner Exhibit 9: Highland Woods profit & loss statements for 2016-17
- Petitioners Exhibit 10: 2017 IBTR filings and attachments
- Petitioners Exhibit 11: Secretary of State records, articles, and photographs regarding 620 Buntin St. (Adams Coliseum Community Center) in Vincennes
- Petitioners Exhibit 12: Exemption application and Knox county records regarding Adams Coliseum
- Petitioners Exhibit 13: PRC, Secretary of State records, articles, and photos regarding 1242 Main Street (the Blue Jeans Center) in Monroe City
- Petitioners Exhibit 14: Exemption application and Knox county records regarding the Blue Jeans Center

7. The record also includes (1) all pleadings, briefs, and documents filed in the current appeal, (2) all orders and notices issued by the Board or ALJ, and (3) an audio recording of the hearing.

III. Findings of Fact

A. Highland Woods and the subject property

8. The subject property includes a community-center building, a parking lot, and an 11-acre area Highland Woods refers to as a park. The park contains several structures, such as pavilions and a bathroom. The community center includes a gymnasium and can hold up to 500 people as an event space. *Pet'r Exs. 4-5; Vieke testimony.*

9. Highland Woods is a non-profit corporation that is exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code. It was formed primarily to build an extra gymnasium for two Catholic schools—Flaget Elementary School and Rivet High School. Members of Highland Woods' volunteer board of directors are all affiliated with, or previously have been affiliated with, the churches and schools. Highland Woods does not pay anyone other than the people who clean the community center. *Pet'r Exs. 1-2; Vieke testimony.*

10. Highland Woods acquired the property from the Evansville Catholic Diocese in 2007 and began to raise money to build the community center. At the time, the property consisted of just the park area and a few of the park buildings. It was used primarily for church picnics, which were fundraisers for churches in the Diocese. *Pet'r Exs. 1-2; Vieke testimony.*
11. Although Highland Woods lets local Catholic schools use the property for free, other users must pay. It appears that Highland Woods charges by the day, rather than the hour, and that renters have the right to use the property for the entire day. It rents the community center for \$1,500 per weekend, which apparently includes Friday through Sunday. Of that weekend rate, \$1,000 is attributable to Saturday. During the week, the community center rents for \$500 a day. Nonprofit entities and churches get a discounted rate of \$500 per weekend. They typically rent the community center to host fundraising events. Non-profit and religious entities that have used the community center include Good Samaritan Hospital, the Christian Education Foundation, and local fire and police departments. Private parties also rent the community center for things like weddings and parties. *Pet'r Exs. 4-5, 8; Vieke testimony.*
12. Highland Woods rents the park for \$300 per weekend. Like the community center, the park is rented by schools, churches, and other non-profit groups for fundraisers and is available to the Catholic schools on all days it is not otherwise reserved. The rental income from the community center and park does not cover Highland Woods' operating expenses, and it relies on fundraisers to keep the facility open. *Vieke testimony.*

B. Use of the property in 2016

13. Timothy Vieke, the volunteer president of Highland Woods' board of directors, handles reservations for the property. Based on a calendar that Highland Woods offered as an exhibit, Vieke identified each instance where the community center was reserved during 2016. He divided those reservations into three categories: public, non-profit/public school, and church. *Pet'r Ex. 8; Vieke testimony.*

14. The community center was available to the Catholic schools any time it was not otherwise reserved for another group. The schools took advantage of that availability, primarily to hold basketball and other sport practices. Because the schools did not need to formally reserve the community center for those activities, they are not included on the calendar and Vieke could not testify as to the precise days and times they occurred. But we credit his testimony that the schools used the center Monday through Saturday during February through October, except for days that it was reserved for other users, as well as some days in June and July. He estimated a total of 146 days, although he acknowledged the actual total could have been a little lower or higher than that. *Pet'r Ex. 8; Vieke testimony.*

15. Treating all days the facility was not otherwise rented as being available to Catholic schools and therefore exempt, and treating all the rentals by schools, churches, and other non-profit entities as exempt, Vieke came up with the following breakdown:

Use Type	Days	Percentage of Year (366 Days)
Non-Exempt		
Public	65	
Total Non-Exempt		18%
Exempt		
Non-profit/public school	32	
Church	8	
Available for Catholic schools	261	
Total Exempt		82%

See Pet'r Ex. 8; Vieke testimony.

16. Highland Woods did not offer a calendar showing the park's usage for 2016, but we credit Vieke's testimony that members of the public and nonprofit entities each used it 5 days and that a church used it 6 days. A Catholic school scheduled the park for an event one day. Like the community center, however, the park was available to the Catholic

schools when others were not renting it. Using the same methodology he employed for the community center, Vieke broke down the park's usage as 98% exempt and 2% non-exempt. *Pet'r Ex. 8; Vieke testimony.*

17. As Highland Woods points out, the PTABOA has granted 100% exemptions to two other Knox County properties that are used to host events: Adams Coliseum Community Center and the Blue Jeans Center. Some of the events, particularly at Adams Coliseum, do not appear to qualify as exempt uses, although there is nothing to show the breakdown of the different uses at the facilities or the PTABOA's reasons for granting the exemptions, beyond a notation "Exempt, Board of Education" on Adams Coliseum's property record card. Adams Coliseum is leased to the Vincennes Education Foundation, Inc.—a not-for-profit corporation organized to (1) solicit gifts to enrich the programs and facilities of the Vincennes Community School Corporation, (2) establish a partnership with the business community for the school corporation's benefit, and (3) enhance the link between the school corporation and the community. *Pet'r Exs. 11-14; Vieke testimony.*

IV. Conclusions of Law

18. Because exemptions relieve properties from bearing their share of the cost of government services, they are strictly construed against taxpayers and in favor of the State. *Indianapolis Osteopathic Hosp., Inc. v. Dep't of Local Gov't Fin.*, 818 N.E.2d 1009, 1014 (Ind. Tax Ct. 2004).
19. Indiana Code § 6-1.1-10-16(a) provides an exemption for all or part of a building that is owned, occupied, and exclusively or predominantly used for educational, literary, scientific, religious, or charitable purposes. I.C. § 6-1.1-10-16(a); I.C. § 6-1.1-10-36.3(c); *Jamestown Homes of Mishawaka, Inc. v. St. Joseph Cnty. Ass'r*, 914 N.E.2d 13, 15 (Ind. Tax Ct. 2009). That exemption extends to land on which an exempt building is situated. I.C. § 6-1.1-10-16(c).

20. Property is predominantly used for exempt purposes if it is used for those purposes more than half the time it is used or occupied during the year ending on the assessment date. I.C. § 6-1.1-10-36.3(a). Property is 100% exempt if it is predominantly used for exempt purposes by a church, religious society, or nonprofit school. I.C. § 6-1.1-10-36.3(c)(2). Other exempt uses are only allowed an exemption that “bears the same proportion to the total assessment of the property as the amount of time that the property was used or occupied for one (1) or more of the [exempt] purposes during the year that ends on the assessment date of the property bears to the amount of time that the property was used or occupied for any purpose during that year.” I.C. § 6-1.1-10-36.3(c)(3). Where a property is used for both exempt and non-exempt purposes, a taxpayer claiming an exemption must compare the time of exempt and non-exempt use. *See Hamilton Cnty. Ass’r v. Duke*, 69 N.E.3d 567, 572 (Ind. Tax Ct. 2017). (“[F]ailure to provide the Indiana Board with a comparison of the relative amounts of time that a property was used for exempt and non-exempt purposes is fatal to a claim of exemption under Indiana Code § 6-1.1-10-36.3.”)
21. Determining whether a property is owned, occupied, and predominantly used for an exempt purpose is a fact-sensitive inquiry. *Jamestown Homes*, 914 N.E.2d at 15. Every exemption case “stand[s] on its own facts” and on how the parties present those facts. *See Indianapolis Osteopathic Hospital, Inc.*, 818 N.E.2d at 1018.
22. Highland Woods owns the property for exempt purposes. It is effectively an arm of the Evansville Diocese and the area’s two Catholic schools. Highland Woods was formed to construct a building for those schools to use as a gym, which is precisely what it did when it acquired the property from the Evansville Diocese. That arrangement does not functionally differ from what other churches and schools do when they form separate building corporations for purposes of obtaining financing or controlling potential

liability. Indeed, it appears to be similar to what the Evansville School Corporation did with Vincennes Education Foundation.¹

23. This case boils down to whether the subject property was predominantly used for exempt purposes. Highland Woods concedes that rentals to members of the public do not qualify as exempt uses. Although Highland Woods counted rentals to non-profit organizations for fundraisers and other activities as exempt, it is not as readily apparent that those activities qualify. The mere fact that an entity is not organized for profit does not mean it is charitable, religious, or educational. We need not decide that question, however. Even if combined, the rentals by the public and non-profit organizations still pale in comparison to the time the property was used by churches for fundraisers and was available to the Catholic schools. Those last two categories qualify as exempt uses.
24. The Assessor appears to argue that we cannot count the days the property was simply available to the Catholic schools as exempt uses and must instead count only the time the schools were physically present at the property. In different context, we might agree. But Highland Woods' close association with the Evansville Diocese and the area's two Catholic schools colors how we must view the evidence in this case. Highland Woods exists to own and operate the property for the benefit of the Catholic schools. The rentals to other groups were simply a way for Highland Woods to connect to the community and to raise money to help maintain the facility. Under those circumstances, we find that the days the property was available to the Catholic schools count as time the property was used for exempt purposes.
25. Even if we only count the days the Catholic schools were physically at the property, it was still used for exempt purposes more than half the days it was in use. Vieke estimated that the Catholic schools used the community center 146 days, although that number could have been a little higher or lower. We are not surprised by his inability to give a

¹ By making this observation, we do not mean to imply that we are basing our determination on the fact that the PTABOA granted exemptions to Adams Coliseum and the Blue Jeans Center. We rely on the evidence concerning the subject property itself.

more definite estimate. As a volunteer, he likely had to prioritize the time he devoted to formalized scheduling. Maintaining a calendar for scheduled events where someone had rented the property was probably necessary to operate the community center efficiently; calendaring recurring use by the Catholic schools was not. Absent any significant evidence to the contrary, we find that the Catholic schools used the community center roughly 146 days. By itself, that is more than all the other uses combined.

26. We recognize that neither Ind. Code § 6-1.1-10-36.3 nor case law applying the predominant-use test specifies how to compute the time a property is being used. In another scenario, a broad-brush approach similar to what Highland Woods offered in this case might not suffice to show predominant use. When non-exempt activities make up anything more than a de minimis percentage of a property's use, taxpayers would be well advised to track closely the time devoted to each use. But on the facts of this case, we find that the subject property was predominantly used for exempt purposes.
27. That leads us to one final question: What is the appropriate percentage of exemption to apply? Highland Woods argues that it is entitled to a 100% exemption. We agree. Although the property was not used exclusively for exempt purposes, it was predominantly used for exempt purposes by churches and not-for profit schools. It is therefore entitled to a 100% exemption under Ind. Code § 6-1.1-10-36.3(c)(2).

V. Final Determination

28. Highland Woods owned the property for exempt purposes. And it was predominantly used by churches and not-for-profit Catholic schools for religious, charitable, or educational purposes. For those reasons, we find that Highland Woods is entitled to a 100% exemption.

This Final Determination of the above-captioned matter is issued by the Board on the date first written above.

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.